EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD AND CLINICAL COMMISSIONING GROUPS (RESPONSIBILITIES AND STANDING RULES) (AMENDMENT) REGULATIONS 2025

2025 No. 245

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Stephen Kinnock, Minister of State at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

2.2 Eleanor Angwin, Deputy Director for Adult Social Care Policy at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tom Lock at the Department of Health and Social Care. Telephone: 07935013828 or email: tom.lock@dhsc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to:

- Transfer responsibility for commissioning healthcare services[1] in Oakhill Secure Training Centre (STC), and any STC established in the future, from His Majesty's Prison and Probation Service Youth Custody Service (HMPPS YCS) to NHS England (NHSE) on 1st April 2025.
- Amend The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 ('the Standing Rules') to increase the rates of NHS-funded nursing care (FNC) payable by the relevant body (NHSE or Integrated Care Boards (ICBs)).

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

[1] The services included are set out in regulation 10(1) of the Standing Rules: (a) community services (including mandatory dental services and sedation services), (b) secondary care services, (c) the services specified in Schedule 4 to the Standing Rules. These are referred to as "healthcare services" throughout this document.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

Secure Training Centres (STCs)

What is being done and why?

5.1 Section 3B(1)(c) of the National Health Service Act 2006 ("the 2006 Act") gives the Secretary of State the power to require NHSE to commission services for people detained in prisons or other accommodation of a prescribed description.

5.2 The instrument removes the table of former STCs from Part 2 of Schedule 3 to the Standing Rules so that NHSE will be responsible for healthcare commissioning at any STC existing from 1st April 2025. The provision is drafted so that commissioning of healthcare services for any future STCs would be the responsibility of NHSE unless further provision is made.

5.3 Oakhill STC is currently the only STC in operation, and the only Children and Young People Secure Estate (CYPSE) setting to remain outside of NHSE commissioning responsibility following the 2012 Health and Social Care Act reforms. This change will bring healthcare services at Oakhill STC into alignment with the rest of the CYPSE.

5.4 The intended aims of this change are to ensure that children and young people residing in STCs receive a comparable range and quality of healthcare with children and young people in the wider CYPSE that is appropriate to their high level of need, and achieves equivalence with the range of services available to children in the community.

5.5 Prior to making regulations under section 3B of the 2006 Act, the Secretary of State must obtain appropriate advice and must consult NHSE, as required under subsection (4) of that section. The Secretary of State has consulted with NHSE and has obtained advice from HMPPS YCS and NHSE as to the desirability of ensuring that NHSE should have commissioning responsibilities as provided for in these Regulations. NHSE were formally consulted on, and approved, the change on 13th February 2025. In light of that consultation and advice, and, having regard to the factors prescribed in section 3B(3), the Secretary of State has decided to amend the Standing Rules in this way.

What was the previous policy, how is this different?

5.6 Following reforms introduced by the Health and Social Care Act 2012, NHSE acquired overall responsibility for commissioning health services in secure settings, including prisons and the CYPSE. However, due to contractual arrangements in place at the time, some services were specifically excluded from this change. This included a number of STCs for children and young people. NHSE and HMPPS YCS have confirmed that responsibility for health service commissioning in the sole remaining STC, Oakhill STC, can be transferred to NHSE by 1st April 2025. The operational move is in train, with the end of the current healthcare provider contract being managed by HMPPS YCS and funding transfers coordinated by DHSC, NHSE and HMPPS YCS. This SI provides that health service commissioning in Oakhill STC will be the responsibility of NHSE from 1st April 2025, as has been the policy intention since the 2012 Act.

5.7 The change will result in delivery of NHSE service specifications for the CYPSE. The NHSE service specifications are benchmarked against the Royal College of Paediatrics and Child Health Healthcare Standards for Children and Young People in Secure Settings, and centred on delivery of the Framework for Integrated Care (SECURE STAIRS), which offers a coherent structure for a comprehensive, trauma-informed system of care that unifies staff and services in the CYPSE.

NHS-funded nursing care (FNC)

What is being done and why?

5.8 FNC is the funding provided by the NHS to care homes with nursing to support the provision of nursing care by a registered nurse for those assessed as eligible. The process for determining eligibility is set out in regulation 28 of the Standing Rules. The relevant body's responsibility to pay a flat rate contribution to the care home towards registered nursing care costs arises where a relevant body (either NHSE or an ICB) determines that a person has a need for nursing care and that the person is a resident in a care home or may need to become resident in a care home. The NHS is responsible for this funding and ICBs pay the weekly flat rate directly to care providers. Accommodation and social care costs are the responsibility of either the local authority and/or the individual (subject to the outcomes of a needs assessment and financial assessment).

5.9 DHSC routinely reviews the rates paid for FNC and updates the rates in the Standing Rules to reflect wage inflation for registered nurses providing such care.

What was the previous policy, how is this different?

5.10 The rates currently set out in the Standing Rules (as amended), for the 2024/25 financial year, are £235.88 per week for the standard rate payment and £324.50 per week for the higher rate.

5.11 The Secretary of State has decided to increase the rate by 7.7% from the 2024/25 financial year. This accounts for the increase in the cost of care demonstrated by annual wage inflation based on adult social care data as well as non-pay factors for the 2025/26 financial year. This instrument therefore amends the rates set out in the Standing Rules to £254.06 per week for the standard flat rate payment and £349.50 for the higher rate payment.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 6E of the 2006 Act was first inserted by section 20(1) of the Health and Social Care Act 2012. Under section 6E (as amended by the Health and Care Act 2022), the Secretary of State is under a duty to impose requirements (known as "standing rules") by regulations on NHSE and ICBs when they are exercising their commissioning functions.

6.2 The Standing Rules have been amended several times since 2012, including updating FNC payment rates annually.

Why was this approach taken to change the law?

6.3 Making regulations that amend the Standing Rules is the only possible approach to make the necessary changes to achieve the policy purposes set out in this Explanatory Memorandum.

7. Consultation

Summary of consultation outcome and methodology

7.1 The provisions related to healthcare commissioning in a secure training centre and FNC are extremely limited and specific and do not change current policy or the operation of patient choice of providers in the NHS. No public consultation has been undertaken. Although no public consultation has been undertaken, relevant experts have been consulted in making these provisions.

8. Applicable Guidance

8.1 STCs: NHS England publishes detailed service specifications for NHS-commissioned healthcare services in the Children and Young People Secure Estate, including Secure Training Centres available here.[2]

8.2 FNC: Guidance on NHS-funded Nursing Care is available in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care July 2022[3] and in the NHS-funded Nursing Care Practice Guidance July 2022.[4]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no significant impact on business.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies across this instrument.

9.3 STCs: the healthcare provider contract for Oakhill STC currently held by HMPPS YCS expires on 30th April 2025, after which the provider is exiting the market.

9.4 FNC: there is a flat rate of funding covering the provision of nursing care by a registered nurse. This helps to minimise the impact of the requirement on small or micro businesses. This funding is provided regardless of the size of the care home or business. We do not anticipate any significant impacts on public bodies due to this increase in the FNC rate.

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[2] NHSE England, *Health and justice service specifications for children and young people in secure settings* (2023) NHS England » Health and justice service specifications for children and young people in secure settings https://www.england.nhs.uk/publication/health-and-justice-and-armed-forces-service-specifications-for-children-and-young-people-in-secure-settings/#:~:text=Health%20and%20justice%20service%20specifications%20for%20children%20and%20young%20people%20in%20secure%20settings,-Document%20first%20published&text=This%20suite%20of%20specifications%20includes,dental%20and%20oral%20health%20specifications

[3] DHSC, *National framework for NHS continuing healthcare and NHS-funded nursing care* (2022) *National framework for NHS continuing healthcare and NHS-funded nursing care - GOV.UK* https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care

[4] DHSC, *NHS-funded nursing care practice guidance* (2022) NHS-funded nursing care practice guidance - GOV.UK https://www.gov.uk/government/publications/nhs-funded-nursing-care-practice

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 DHSC and NHSE will continue to monitor the policies for healthcare service commissioning on an ongoing basis and consider changes as required.

10.2 With respect to FNC, the approach to monitoring this legislation is to review the rate annually and, if required, update the rate by amending the legislation.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").